83-1131

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN CHRISTEN TORJESEN, Appellant,

-vs-

LEN YOUNG SMITH, Appellee.

APPEAL FROM THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

JURISDICTIONAL STATEMENT

JOHN CHRISTEN TORJESEN
Appellant
Route 5, Box 176
Murphysboro, Illinois 62966
(618) 684-5000

QUESTIONS PRESENTED:

Whether Illinois law requiring all candidates for election to the office of judge, and all applicants for the office of attorney at law, to pay great fees and be tutored and approved by the America Bar Association, violates the First and Fourteenth Amendments and the Republican Form of Government Guaranty.

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PARTIES:

Len Young Smith is President of the Illinois Board of Law Examiners. Other parties to the proceeding in the court whose judgment is sought to be reviewed are Stuart Duhl, Member of the Illinois Board of Law Examiners; Francis D. Morrissey, Member of the Illinois Board of Law Examiners; George B. Lee, Member of the Illinois Board of Law Examiners; Donald H. Funk, Secretary-Treasurer of the Illinois Board of Law Examiners; and Roy O. Gulley, Director of the Administrative Office of the Illinois Courts.

OPINION BELOW:

The opinion of the Appellate Court of Illinois, Fifth Judicial District, is reported at 114 Ill.App.3d 147, 448 N.E.2d 273. A copy of the opinion is contained in the Appendix following.

JURISDICTION:

This is an appeal from the judgment of the Appellate Court of Illinois, Fifth Judicial District, affirming the judgment of the Circuit Court of Illinois, First Judicial Circuit, Jackson County, upholding the Constitutionality of Illinois Supreme Court Rule 703(b) and Article VI, Section 11, of the Illinois Constitution of 1970, whereby all judicial officers in the State of Illinois must be examined on their general fitness, but not before they have paid great sums of money and been tutored and approved by the American Bar Association.

The Appellate Court of Illinois, Fifth Judicial District, entered its judgment on April 26, 1983; petition for rehearing was denied on May 10, 1983. [114 Ill.App.3d 147, 448 N.E.2d 273.] Petition to appeal was denied by the Supreme Court of Illinois on October 4, 1983. Notice of appeal was filed in the Appellate Court of Illinois on November 15, 1983. [Infra., A-7.]

Jurisdiction is conferred on this court by Title 28, United States Code, Section 1257(2). [Lathrop v. Donohue, 367 U.S. 820 (1960); In re Griffiths, 413 U.S. 717 (1973); In re Summers, 325 U.S. 561 (1944); Court of Appeals v. Feldman, No. 81-1335, decided March 23, 1983, 51 L.W. 4285.]

STATUTES INVOLVED:

Article VI, Section 12(a), of the Illinois Constitution of 1970, provides:

> "Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions."

Article VI, Section 11, of the Illinois Constitution of 1970, provides:

> "No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State,

and a resident of the unit which selects him. No change in the boundaries of the unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change."

Illinois Supreme Court Rule 703(b) provides:

"After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies and fulfilled the requirements and received a first degree in law from a law school approved by the American Bar Association. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require."

STATEMENT OF THE CASE:

The appellant, John Christen Torjesen, is a candidate in pursuit of election to the office of judge in the State of Illinois. In furtherance of his candidacy and pursuit, John Christen Torjesen filed application with the Illinois Board of Law Examiners for admission to the bar on examination.

The Board of Law Examiners accepted the application but refused under color of Illinois Supreme Court Rule 703(b) to admit Mr. Torjesen to the examination on general fitness because he had not "pursued a course of law studies and fulfilled the requirements and received a first degree in law from a law school

approved by the American Bar Association." [Exhibit "A", infra., A-9.]

The refusal of the Board of Law Examiners to admit Mr. Torjesen to the examination on general fitness precludes him admission to many important offices in the State of Illinois, including but not limited to the office of attorney at law [Illinois Supreme Court Rule 701; 72 Ill.2d 701], the office of judge [Article VI, Section 11, of the Illinois Constitution of 1970] and the office of state's attorney [Article VI, Section 19, of the Illinois Constitution of 1970].

Regardless, John Christen Torjesen filed his name as a candidate for the office of Associate Judge in and for the First Judicial Circuit of the State of Illinois. The Chief Judge of the First Judicial Circuit certified the filed name of John Christen Torjesen as a candidate for the office of associate judge pusuant to Illinois Supreme Court Rule 39. [72 Ill.2d Rule 39]

Upon such certification, the Director of the Administrative Office of the Illinois Courts obtains a nondiscretionary duty to place the certified name of candidate John Christen Torjesen on the ballot used in filling the office of associate judge. [Illinois Supreme Court Rule 39; 72 Ill.2d Rule 39.]

Roy O. Gulley, Director of the Administrative Office of the Illinois Courts, acknowledged the aforesaid certification of the name of John Christen Torjesen as a candidate for the office of associate judge but refused to comply with his nondiscretionary duty under

Rule 39, claiming instead an overriding right under Article VI, Section 11, of the Illinois Constitution of 1970, to exclude a candidate from the ballot if the candidate is not an attorney at law. [Exhibit "B", infra., A-10.]

Roy O. Gulley refused to place the certified name of John Christen Torjesen on the ballot used in filling the office of associate judge because Mr. Torjesen was not an attorney at law because the Board of Law Examiners refused him admission to the examination on general fitness because he had not paid the fees and been tutored and approved by the American Bar Association.

Under Illinois law, particularly Article VI, Section 11, of the Illinois Constitution of 1970, and Illinois Supreme Court Rule 703(b), candidates for election to high constitutional offices in the State of Illinois must pay great fees and be tutored and approved by the American Bar Association.

The question of whether a candidate for election to the office of judge in the State of Illinois can be compelled to be tutored and approved by the American bar Association was clearly raised on the face of the complaint commencing this case in the first instance, and was raised again on review in the appellate court, as hereinafter more particularly appears.

Mr. Torjesen commenced this case by filing a two count complaint in mandamus in the local state court of general jurisdiction. Torjesen alleged in Count

I that he was in pursuit of and a candidate for the offices of judge and attorney at law in the State of Illinois; that the Board of Law Examiners had barred him from the examination on general fitness, and therefor also from the offices of judge and attorney at law, only because he had not been tutored and approved by the American Bar Association as required by Illinois Supreme Court Rule 703(b); that Rule 703(b) violated his rights under state law and under the due process, equal protection and republican form of government clauses of the Constitution of the United States and that the Board of Law Examiners had an immediate duty to admit John Christen Torjesen to the examination on general fitness.

In Count II, Torjesen alleged that the Chief Judge of the First Judicial Circuit of Illinois had certified his name to Roy O. Gulley, Director of the Administrative Office of the Illinois Courts, as a candidate for the office of associate judge; that Roy O. Gulley had refused to place the certified name of John Christen Torjesen on the ballot he was preparing for use in filling the office of associate judge because Mr. Torjesen was not an attorney at law as required by Article VI, Section 11, of the Illinois Constitution of 1970; that Article VI, Section 11, of the Illinois Constitution of 1970, as applied by and through Illinois Supreme Court Rule 703(b), violated his rights under state law and under the due process, equal protection and republican form of government clauses of the Constitution of the

United States and that Roy O. Gulley had an immediate duty to place the certified name of John Christen Torjesen on the ballot used in filling the office of associate judge.

The circuit court of Illinois summarily dismissed the complaint on motion holding that no cause of action was or could be stated on the facts alleged in the complaint and that any issue sought to be asserted therein was barred under res judicata by an earlier proceeding.

On appeal, the appellate court of Illinois reversed the circuit court with regard to its holding on res judicata. The appellate court also held against all other affirmative defenses raised on appeal by the Board of Law Examiners and by Roy O. Gulley.

John Christen Torjesen argued in the Illinois Appellate Court that Illinois Supreme Court Rule 703(b) and Article VI, Section 11, of the Illinois Constitution of 1970, violated his rights under state law and under the freedom of speech and association, due process, equal protection and republican form of government clauses of the Constitution of the United States.

The Illinois Appellate Court considered the constitutionality of Illinois Supreme Court Rule 703(b) and of Article VI, Section 11, of the Illinois Constitution of 1970, and held that admission to the examination on general fitness, to the office of attorney at law and to the office of judge could be restricted to graduates of American Bar Association law schools.

THE QUESTIONS ARE SUBSTANTIAL:

This appeal raises questions of obvious national importance. To require applicants for high judicial office, including candidates for election to the office of judge, to pay great fees and be tutored and approved by what is but a private and nondomestic association, is a substantial matter in fact and at law.

In Court of Appeals v. Feldman, No. 81-1335, decided March 23, 1983, 51 L.W. 4285, this court remanded to the District Court for the District of Columbia to consider the constitutionality of a court rule requiring applicants to the bar to be graduates of American Bar Association law schools. The instant case raises a similar but much more substantial issue, being a challenge to the constitutionality of a court rule requiring applicants not only to the bar but also to the bench to be graduates of American Bar Association law schools.

A. HISTORY AND FUNCTION

Power to create and regulate the office of attorney at law is nowhere explicitly granted to the judiciary of Illinois, but is construed as implied in the constitutional separation and delegation of powers as necessary for the complete performance of the judicial function. [In re Day, 181 Ill. 73, 54 N.E. 646 (1899); The People v. Peoples Stock Yards Bank, 344 Ill. 462, 176 N.E. 901 (1931).]

Attorneys are officers of the court not simply by tradition or because of their special privileges and immunities regarding jury duty, freedom from arrest, etc., but foremost because they are repositories of one extraordinary and sovereign power, the power to appear in court in the turn of another person, which power clearly stikes to the jurisdiction of the courts so as to be beyond the reach of the courts except by necessity. The history of common law jurisdictions confirms that the attorney's right to appear in court in the turn of another person has always been by delegation of sovereign power, and never by rise of common right. [Blackstone, Commentaries III, 25; Maitland & Pollack, The History of English Law I, 191.]

The Illinois Supreme Court admits persons to the office of attorney at law upon a finding of their qualification therefor in two general respects: the applicant must be of good moral character and have general fitness to practice law. [Illinois Supreme Court Rule 701, 73 Ill.2d R. 701; In re Day, 181 Ill. 73, 54 N.E. 646 (1899).] That only persons found to have good moral character and general fitness to practice law are admitted to such a judicial office as attorney at law is necessary for and beneficial to the administration of justice.

The constitutional requirement that judges be attorneys at law is not that they be or have been practising attorneys at law, but only that they be qualified and sworn as attorneys at law. In adopting such a con-

stitutional requirement, the people of Illinois noticed and took the courts' qualifications for attorneys at law and incorporated them into the Illinois constitution as one qualification for judges and, in general, for most other judicial officers. On incorporation, those qualifications are transformed and obtain constitutional status, whereby they can no longer be changed, augmented or diminished, even by the courts which had previously set them forth. [Cusack v. Howlett, 44 Ill. 2d 233, 254 N.E.2d 506 (1971), the state may not vary qualifications which have been declared by the constitution; People v. McCormick, 261 Ill. 413, 103 N.E. 1053 (1914); N.A.-A.C.P. v. Button, 371 U.S. 415, 439 (1962), a state may not use regulation of the legal profession as a means to inhibit constitutional rights; Railroad Trainmen v. Virginia Bar, 377 U.S. 1, 8 (1963).]

The Illinois Supreme Court is to continue its determination of persons' qualification for the office of attorney at law, but does so now no longer under its inherent authority but by constitutional mandate to determine thereby more significantly the persons' qualification for the office of judge, and for other offices in the judiciary in general.

The constitutional requirement that judges be attorneys at law first existed in Illinois by amendment proposed by the legislature on June 30, 1961 [Laws of Illinois 1961, at 3917] and ratified by the people on November 6, 1962. [S.H.A., Const., Art. VI, "Historical Note".] On June 30, 1961, persons were, and always had

been, eligible for the office of attorney at law without having had or pursued any law school study. [Ill. Rev. Stat. 1961, ch. 110, sec. 101.58; Sprecher, "Admission to Practice Law in Illinois," 46 Ill. L. Rev. 811 (1952).] Under the constitutional amendment which the legislature considered and proposed to the people of Illinois, persons were to be eligible for the office of judge without having had any law school study.

On September 28, 1962, the Illinois Supreme Court changed its rules regarding eligibilty for the office of attorney at law and began requiring attorneys to be graduates of approved law schools. [25 Ill.2d R. 58] The impetus for the approved law school requirement can reasonably be inferred from the fact that for years the organized bar in Illinois had been advocating for nomination of judges by commission composed predominately of organized bar representatives. [Sixth Illinois Constitutional Convention, "Record of Proceedings" VI, 1008.] While the proposals regarding such a nominating commission were and always have been rejected, in the approval process of law schools the organized bar was afforded a less visible alternative for and did succeed in obtaining some control over who might accede to the office of judge. [S.H.A., ch. 110A, sec. 703(b), "Supplement to Historical and Practice Note."]

On September 28, 1977, that control in fact became control at law when the Illinois Supreme Court again changed its rules regarding eligibility for the of-

fice of attorney at law and began requiring attorneys and judges to be graduates of American Bar Association law schools. [67 Ill.2d R. 703(b).]

B. STATE INTEREST

The Illinois Appellate Court held that the requirement that state court judges be attorneys at law be graduates of American Bar Association law schools "advances a state's compelling need to obtain judicial candidates who are qualified to deal with the complexities of the law." [Torjesen v. Smith, 114 Ill.App.3d 147, 150, 448 N.E.2d 273, 275.]

C. INJURIOUS EFFECTS

(1) Unnecessary Expense

In 1982, the average cost of tuition required to obtain the American Bar Association legal education specified in Rule 703(b) was $12,567. [American Bar Association, A Review of Legal Education in the United States- 1981-1982.]

Illinois law requires payment of that cost by all persons who would proceed to qualify as a candidate for the office of judge. [Illinois Supreme Court Rule 701, et seq., 73 Ill.2d R. 701; Article VI, Section 11, of the Illinois Constitution of 1970.] John Christen Torjesen is a candidate in pursuit of election to the office of judge but cannot afford to pay an average $12,567 in tuition for American Bar Association schooling and approval. Illinois has no provision whereby John Chris-

ten Torjesen and others who cannot afford American Bar Association schooling are allowed to avoid the cost and yet qualify as a candidate for the office of judge.

$12,567 is higher than the amounts which the court held to be unconstitutionally high in Lubin v. Panish, 415 U.S. 709 (1974), and Bullock v. Carter, 405 U.S. 134 (1972). In Bullock v. Carter, the court also held unconstitutional the principle of requiring candidates to pay costs on a pro rata basis.

The expense associated with Rule 703(b) is not necessary to protect the state's interest in obtaining competent jurists. Twice a year the state conducts an examination of the general fitness of would-be jurists. [Illinois Supreme Court Rule 704, 73 Ill.2d R. 704.] That examination on general fitness is sufficient to protect the state's interest in obtaining competent jurists. Throughout most of the history of Illinois that examination has with good results been the only protection of the state's interest in obtaining competent jurists. [Sprecher, "Admission to Practice Law in Illinois," 46 Ill. L. Rev. 811 (1952).]

Given the state's examination on general fitness, how a would-be jurist obtains the requisite general fitness in law is immaterial to any reasonable state interest.

A liberal education followed by legal apprenticeship has traditionally been the preferred method of obtaining the general fitness which is desired for all professional jurists. [Roger North, Lives of the Norths

(1890 ed.) III, ¶¶. 21, 155 & passim.] Law schools structurally encourage younger students and discourage older students (infra.), thereby resulting in less liberally educated graduates, to the detriment of the administration of justice. Law school graduates also tend to be ignorant of the mechanics and practice of law, which law schools are now attempting to remedy through an increased use of clinics where the law student is treated as a paralegal.

California is the only state in the union which today allows admission to examination on general fitness without the examinee having had any law school study. [American Bar Association, A Review of Legal Education in the United States- 1981-1982, at 64.] The pass rates of first time examinees in the last four examinations in California are respectively 40%, 0%, 50% and 33% for apprentices of law offices and 41%, 69%, 45% and 71% for graduates of American Bar Association law schools. ["General Bar Examination Statistics," Committee of Bar Examiners, San Fransisco.] Law office study is clearly a viable method of obtaining general fitness in law. Even if law office study had negligible pass rates, that would not be sufficient grounds to eliminate it as an alternative, especially as to indigents.

Not only can many persons not afford the cost of an American Bar Association law school, many persons, particularly older persons with immediate family and financial obligations, are unable to accommodate

the radical lifestyle demanded for graduation from an American Bar Association law school. American Bar Association rules prohibit employment for more than twenty hours a week while attending law school: law office apprenticeships entail no loss of employment or earnings. John Christen Torjesen and many other older persons with immediate family and financial obligations have competence or potential for general fitness and are interested in law, but cannot afford the unnecessary loss of income associated with Rule 703(b).

There are only 172 American Bar Association law schools throughout the united States: there are innumerable law offices throughout the United States. John Christen Torjesen and many other older persons with immediate family and financial obligations have competence or potential for general fitness and are interested in law, but cannot manage the disruptive and unnecessary relocation associated with Rule 703(b).

In 1982, only 8% of the graduates of American Bar Association law schools were classifiable minorities. [American Bar Association, A Review of Legal Education in the United States- 1981-1982.]

The opinions of this court are replete with statements of the principle that classifications based upon wealth are disfavored. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966); Lindsey v. Normet, 405 U.S. 56, 79 (1972); Shapiro v. Thompson, 394 U.S. 618, 633 (1969); Clements v. Flashing, No. 80-1290, decided June 25, 1982, 50 LW 4869. In Illinois only the

wealthy can today aspire to become attorneys and judges. The poor have no similar realistic opportunity. This wealth discrimination has not always existed in Illinois, and is today unreasonable and unnecessary: the wealthy do not make better jurists than the poor.

Requiring judges to be graduates of American Bar Association law schools has a substantial impact upon the voters of Illinois. Judicial elections are commonly known to not generate the level of popular interest which elections for offices in other branches of government often generate. This lack of interest in judicial elections has been shown to be not because of a lack of interest in judicial offices but because of factors which would depress voter interest in any office, factors such as ballot position, election scheduling and nonpartisan and retention elections. [Philip L. Dubois, From Ballot to Bench, University of Texas, Austin (1980).] The principle is that only as judicial elections become more contested will electors be able to make and make more meaningful choices by their votes.

Judicial elections would be more meaningful in Illinois if the opportunity for appearing on the ballot was not priced by Rule 703(b) beyond the reach of so many of the voters in Illinois. If such voters are dissatisfied with the slate of judicial candidates, they may raise one of their own to the level of general fitness required of judicial officers, as John Christen Torjesen has raised to the level of general fitness required of judicial officers, but then lack the financial resources

necessary under Rule 703(b) to properly qualify as candidate. Their recourse is disenfranchisement. The elimination of money as a bar to judicial candidacy is clearly beneficial to judicial selection.

Legal assistants, at 94.3%, are the second fastest growing occupation in the United States. [Silvestri, "Occupational Employment Projections" 46, Monthly Labor Review, Nov. 1983.] Those legal assistants will not be stopped from learning the law. They soon will be and already are clamouring for recognition of their learning. To tap that ready resource and allow legal apprentices to sit for the examination on general fitness would allow the poor to aspire to judgeships. At the same time, legal services provided the public would generally improve because of the low cost of employing persons of greater competence who would be attracted to the apprenticeships by the opportunity to thereby be examined on their general fitness in law.

(2) Freedom of Speech and Association

Rule 703(b) is brief. It delegates to the American Bar Association complete control to instruct and approve all applicants for admission to the examination on general fitness. The American Bar Association is free to and does impose whatever instruction and testing it desires under Rule 703(b), because no standards or oversight exist at law.

The American Bar Association is not, nor can it claim to be, unbiased meritocracy. The American Bar Association is but a private political lobby.

Many of the purposes of the American Bar Association are offensive to John Christen Torjesen and to others who would apply to be examined on their general fitness in law. One purpose of the American Bar Association, expressed in its constitution, article I, section 2, is "to promote throughout the nation . . . the uniformity of legislation and of judicial decision." That purpose is offensive to John Christen Torjesen as being antithetical to the distinct sovereignty of the different states.

The purposes of the American Bar Association are pursued and advanced through the law schools referred to in Rule 703(b). In order to qualify for the offices of judge and attorney at law, John Christen Torjesen is compelled by the Illinois Supreme Court to attend those law schools and there associate with the American Bar Association and advance its purposes.

Illinois can protect all its legitimate interests without requiring candidates for the offices of judge and attorney at law to associate with a private lobby and advance its purposes. (supra.)

Freedom from such forced association is guaranteed by the First Amendment and protected against state action by the Fourteenth Amendment, even against state action colored as regulation of the practice of law. [Baird v. State Bar of Arizona, 401 U.S. 1

(1971); Schware v. Board of Law Examiners, 353 U.S. 232 (1957); Bates v. State Bar of Arizona, 433 U.S. 350 (1980).]

Practice of law, and particularly of litigation, is a form of protected political expression. [N.A.A.C.P. v. Button, 371 U.S. 415, 429 (1962).] Training for the practice of law, and for litigation, can also be and is a form of political expression, and should be protected. What if Rule 703(b) specified law schools approved by the N.A.A.C.P.?

The American Bar Association is as much an unconventional political party as is the N.A.A.C.P.. [N.A.A.C.P. v. Button, at 431.] The American Bar Association has its own political and juristic values, and they permeate the instruction and testing required under Rule 703(b). In order to qualify for the offices of judge and attorney at law, John Christen Torjesen is compelled by the Illinois Supreme Court to join in the American Bar Association's expression of their political and juristic values and to obtain approval from the American Bar Association.

Such forced expression is unnecessary (supra.) and violates the First Amendment as applied to the states by the Fourteenth Amendment.

The violation of First Amendment rights is particularly offensive in this case because the person subject to forced association and expression is affected in and as a result of his candidacy for high government office. To require any candidate for a policy making

public office to be tutored for three years by a political lobby, is insulting and offensive to candidates and voters.

(3) Republican Principles

This case invokes also the second line of ballot access cases involving classification schemes that impose burdens on new or small parties or independent candidates. [e.g., Anderson v. Celebrezze, No. 81-1635, decided April 19, 1983, 51 L.W. 4375; Illinois Elections Bd. v. Socialist Workers Party, 440 U.S. 173 (1979); Williams v. Rhodes, 393 U.S. 23 (1968).]

The State of Illinois well publishes the fact that incumbents constituting a majority of the Illinois Supreme Court were on September 28, 1977, and now are, members of the American Bar Association. [Illinois Secretary of State, Illinois Blue Book 1977-1978 & 1981-1982.]

The American Bar Association is strictly a voluntary association where the acts of the American Bar Association are in truth the acts of its members.

The delegation by the Illinois Supreme Court to the members of the American Bar Association of control over qualifications for admission to the examination on general fitness is then a delegation of power by the court to incumbents of the court.

For members of a court to have direct personal interest in subject matter before the court, and a majority of the members of the Illinois Supreme Court did

through their membership in the American Bar Association have a direct personal interest in the subject matter of Rule 703(b) as and when it was entered on September 28, 1977, is classic conflict of interest. Conflict of interest is absolute liability, especially as to the judiciary, and official acts committed under conflict of interest are void. [See, United States v. Will, 449 U.S. 200, 213 (1980).]

Membership in the American Bar Association by incumbents of the court which enacted Rule 703(b) cannot be justified on the basis of thereby maintaining oversight of the American Bar Association's exercise of power under Rule 703(b). Such oversight must be formal and official oversight at law, and not informal fraternization in fact.

Today a majority of the incumbents of the Illinois Supreme Court, and many other incumbent state judges, are members of the American Bar Association. [Illinois Secretary of State, Illinois Blue Book 1981-1982; Reincke, ed., The American Bench (1979).] The American Bar Association regularly engages in the slating of candidates for judgeships in Illinois. Any candidate for judge without the approval of the American Bar Association has ill chance of succeeding therefor. [Sixth Illinois Constitutional Convention, "Record of Proceedings" III, 2347.]

Those incumbent judges and others who are the persons of the American Bar Association have great political control in fact over the nomination and elec-

tion of candidates. Those incumbent judges and others who are the persons of the American Bar Association are not representatives of the people of Illinois. [Application of Schatz, 80 Wash.2d 604, 497 P.2d 153, 158 (1972).]

Rule 703(b) gives to those incumbent judges and others who are the persons of the American Bar Associatioon, personal control at law over the qualification of candidates. As a result, John Christen Torjesen and other candidates for judge who are disaffected by the American Bar Association, are denied opportunity to qualify and appear on the ballot, to the great detriment of the electorate.

That Rule 703(b) gives the persons of the American Bar Association such inordinate control over access to the ballot violates the Equal Protection of the laws. That Rule 703(b) so burdens candidates and voters disaffected by the American Bar Association, violates the First Amendment. Since the persons of the American Bar Association are private and few and are generally foreign to the State of Illinois, their control over access to high public office violates the Republican Form of Government Guaranty. [Anderson v. Celebrezze, No. 81-1635, decided April 19, 1983, 51 L.W. 4375; Illinois Elections Bd. v. Socialist Workers Party, 440 U.S. 173 (1979); Williams v. Rhodes, 393 U.S. 23 (1968).]

(4) Conclusion

Illinois Supreme Court Rule 703(b) is constitutionally infirm with respect to its reference to the American Bar Association and with respect to its requirement of law school study. John Christen Torjesen is entitled to the relief he has prayed for upon a finding that Rule 703(b) is constitutionally infirm in either respect.

CONCLUSION

For the foregoing reasons, the questions presented in this case are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully Submitted

JOHN CHRISTEN TORJESEN
Appellant
Route 5, Box 176
Murphysboro, Illinois 62966
(618) 684-5000

APPENDIX

COPY OF THE OPINION OF THE COURT
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED:

FILED
April 26, 1983
Walter T. Simmons
Fifth District of Illinois
Clerk Appellate Court

No. 82-573

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

JOHN CHRISTEN TORJESEN, Plaintiff-Appellant,	)	Appeal from the Circuit Court of Jackson County.
v.	)	
LEN YOUNG SMITH, President of the Board of Law Examiners, STUART DUHL, Member of the Board of Law Examiners, FRANCIS D. MORRISSEY, Member of the Board of Law Examiners, GEORGE B. LEE, Member of the Board of Law Examiners, DONALD H. FUNK, Secretary-Treasurer of the Board of Law Examiners, and ROY O. GULLEY, Director of the Administrative Office of the Illinois Courts, Defendants-Appellees.	)	Honorable Bill F. Green, Judge Presiding.

Mr. JUSTICE KASSERMAN delivered the opinion of the court:

On July 9, 1982, John Torjesen, plaintiff, filed a two count complaint for mandamus in the circuit court of Jackson County. Count I was directed against the members of the Illinois Board of Law Examiners, and sought an order (1) declaring Supreme Court Rule 703 (b) (87 Ill. 2d R. 703(b)) unconstitutional and (2) compelling the Board members to permit plaintiff to sit for the bar examination. Count II was directed at Roy O. Gulley, as Director of the Administrative Office of the Illinois Courts, and sought an order compelling defendant Gulley to place plaintiff's name on the ballot "in the matter of election and appointment to the office of associate judge of the Circuit Court for the First Judicial Circuit." On August 26, 1982, the circuit court dismissed the complaint with prejudice, finding, inter alia, that no cause of action was or could be stated on the facts alleged therein. Plaintiff has perfected an appeal to this court.

Supreme Court Rule 703 (87 Ill. 2d R. 703) sets forth the educational requirements imposed upon every applicant seeking admission to the Illinois bar by way of examination. Section (b) of the Rule provides as follows:

> "(b) Legal Education. After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies and fulfilled the requirements and received a first degree in law from a law school approved by the American Bar Association. Each applicant shall make proof that he

> has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require."

In the instant case, it is undisputed that plaintiff has not received a degree from any law school. Nevertheless, plaintiff alleges in Count I that the Board has a clear duty to admit him to the examination, since Rule 703(b) is unconstitutional "in that it requires all applicants * * * to submit to a three year tutelage under and receive approval from a private and foreign association as prerequisite for admission to the office of attorney at law." We disagree. There is authority from other jurisdictions upholding the requirement that candidates for admission to a state bar hold a law degree from an institution approved by the American Bar Association. (Application of Schatz (1972), 80 Wash.2d 604, 497 P.2d 153; Petition of Batten (1967), 83 Nev. 265, 428 P.2d 195; Henington v. State Board of Bar Examiners (1956), 60 N.M. 393, 291 P.2d 1108), and we are in agreement with these authorities. To require a board of examiners or a state supreme court itself to look into the individual qualifications and standards of every nonaccredited law school whenever a graduate from that school applies to take the bar examination would be to impose an unreasonable burden on the board or the court. Therefore, a rule requiring applicants to have a degree from a school accredited by the American Bar Association is valid, reasonable, and not offensive to constitutional

principles. (Application of Schatz.) Moreover, courts traditionally have employed members of the bar for purposes of ascertaining the qualifications of those applying for membership (Rosenthal v. State Bar Examining Committee (1933), 116 Conn. 409, 165 A. 211), and have recognized that the American Bar Association is a representative body upon whose accreditation decisions a state court or bar examining board may properly rely. (Henington v. State Board of Bar Examiners.) Since plaintiff has not persuaded us that Rule 703(b) is unconstitutional, and since it is undisputed that plaintiff did not graduate from any law school, accredited or not, the Board members had no duty to admit him to the bar examination. Accordingly, count I of plaintiff's complaint was properly dismissed.

In the second count of his complaint, plaintiff alleges that defendant Gulley has a duty to place plaintiff's name on the ballot for the office of associate judge in the First Judicial Circuit. While this defendant has not filed a brief, we have elected to consider the merits of this aspect of the appeal pursuant to the authority of First Capitol Mortgage Corp. v. Talandis Construction Corp. (1976), 63 Ill.2d 128, 345 N.E.2d 493. Plaintiff asserts that section 11 of article 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, §11), which provides that judges and associate judges must be attorneys, is unconstitutional by reason of the unconstitutionality of Supreme Court Rule 703(b) (87 Ill.2d R. 703(b)). We reject this contention. As dis-

cussed above, we find no constitutional infirmities in Rule 703(b) and, in any event, the requirement that state court judges be attorneys is not unconstitutional, since such a requirement advances a state's compelling need to obtain judicial candidates who are qualified to deal with the complexities of the law. (See Bullock v. State of Minnesota (8th Cir. 1979), 611 F.2d 258.) Thus, Count II of plaintiff's complaint also properly was dismissed.

Lastly, we note that both the members of the Board and defendant Gulley have filed motions to dismiss the instant appeal. These motions, as well as plaintiff's objections thereto, have been taken with the case. We reject defendants' assertions that this appeal is barred by the doctrine of res judicata. While plaintiff raised similar issues in a prior case (Jackson County case no. 82-MR-14), no final appealable order was ever entered in that case, nor did denial of plaintiff's motion for leave to file a complaint directly with the Illinois Supreme Court operate as a bar to the instant suit (Monroe v. Collins (1946), 393 Ill. 553, 66 N.E.2d 670). We also reject defendants' contention that this court and the circuit court lack jurisdiction in this cause. The complaint did not attack discretionary acts performed by the defendants, but instead alleged that defendants had a clear duty to act in a non-discretionary matter. The circuit courts have original jurisdiction in mandamus proceedings (People ex rel. Baird and Warner v. Lindheimer (1939), 370 Ill. 424, 19 N.E.2d

336), and the circuit court properly exercised jurisdiction here. Finally, defendant Gulley asserts that questions as to the judicial vacancy in the First Judicial Circuit are moot, since the vacancy has been filled. Plaintiff has alleged, however, that the position has again become vacant. Since this aspect of the controversy is capable of recurring and since, as a practical matter, each vacancy is likely to be filled prior to appellate review of any claim by plaintiff, we have elected to consider plaintiff's argument on its merits. Accordingly, both motions to dismiss this appeal are denied.

For the foregoing reasons, the judgment of the circuit court of Jackson County, dismissing with prejudice plaintiff's complaint for mandamus, is hereby affirmed.

AFFIRMED.

Jones, J. and Welch, J. concur.

COPY OF THE NOTICE OF APPEAL:

FILED
Nov. 15, 1983
Walter T. Simmons
Fifth District of Illinois
Clerk Appellate Court

No. 82-573

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

JOHN CHRISTEN TORJESEN, Plaintiff-Appellant,	)	Appeal from the Circuit Court of Jackson County,
v.	)	First Judicial Circuit, Case No.
LEN YOUNG SMITH, President of the Board of Law Examiners, STUART DUHL, Member of the Board of Law Examiners, FRANCIS D. MORRISSEY, Member of the Board of Law Examiners, GEORGE B. LEE, Member of the Board of Law Examiners, DONALD H. FUNK, Secretary-Treasurer of the Board of Law Examiners, and ROY O. GULLEY, Director of the Administrative Office of the Illinois Courts, Defendants-Appellees.	)	82-MR-22. Honorable Bill F. Green, Presiding Judge.

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

PLEASE TAKE NOTICE that Plaintiff-Appellant JOHN CHRISTEN TORJESEN hereby appeals to the Supreme Court of the United States from the judgment of the Appellate Court, affirming the decision of the Circuit Court, entered in this cause on April 26, 1983.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph (2).

JOHN CHRISTEN TORJESEN
Plaintiff-Appellant
Route 5, Box 176
Murphysboro, Illinois 62966
(618) 684-5000

STATE BOARD OF LAW EXAMINERS
STATE OF ILLINOIS

DONALD H. FUNK, SEC. TREAS.
SPRINGFIELD, ILLINOIS

February 8, 1982

Mr. John Torjesen
1004 Walnut Street
Murphysboro, Illinois 62966

Dear Mr. Torjesen:

We are in receipt of your letter of February 5, 1982 renewing your request that you be permitted to sit for the February, 1982 bar examination.

Your request is denied since you have not submitted proof of legal education as required by Rule 703 (b).

Very truly yours,

Donald H. Funk

Secretary

DHF:q

EXHIBIT "A"

ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS

ROY O. GULLEY
DIRECTOR
SUPREME COURT BUILDING
SPRINGFIELD 62706

30 NORTH MICHIGAN AVENUE
CHICAGO 60602

May 27, 1982

Mr. John Torjesen
Route 5, Box 377
Murphysboro, Illinois 62966

Dear Mr. Torjesen:

I have your letter of May 24.

In the interest of accuracy, it was Acting Chief Judge George Oros and not Chief Judge Robert H. Chase who certified to me the names of the applicants for the position of Associate Judge in the First Judicial Circuit.

Since you are not a lawyer and since you are not eligible to serve as an Associate Judge under the provisions of the Illinois Constitution, I did not place your name on the ballot when I distributed it.

Very truly yours,

Roy O. Gulley

Director

ROG:nk

EXHIBIT "B"